

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

IVAN ALVAREZ,

Plaintiff,

vs.

UNITED STATES CUSTOMS AND  
BORDER PROTECTION AGENCY,

Defendant.

CASE NO. 11CV1397 JLS (BLM)

**ORDER GRANTING MOTION TO  
DISMISS WITHOUT PREJUDICE**

(ECF No. 16)

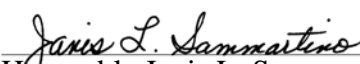
Presently before the Court is Plaintiff Ivan Alvarez's ("Alvarez's") Motion to Dismiss Without Prejudice. (Pl.'s MTD, ECF No. 16) Alvarez filed the motion pursuant to Federal Rule of Civil Procedure 41(a)(1), however voluntary dismissal pursuant to this section is unavailable because the opposing party has already served an answer in this action, (Answer, ECF No. 11), and has not signed on to a stipulation of dismissal. *See* Fed. R. Civ. Proc. 41(a)(1)(A)(i)–(ii). The Court will therefore construe the motion as having been made pursuant to Rule 41(a)(2).

"The decision to grant a voluntary dismissal under Federal Rule of Civil Procedure 41(a)(2) is addressed to the sound discretion of the district court." *Navellier v. Sletten*, 262 F.3d 923, 938 (9th Cir. 2001). "A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result. *Smith v. Lenches*, 263 F.3d 972 (9th Cir. 2001). Here, the Court notes that U.S. Customs and Border Protection Agency has already advocated dismissal of this action. (*See generally* Resp. to OSC, ECF No. 14)

1           Having considered the motions in light of the facts and procedural posture of this case, the  
2 Court finds it appropriate to **GRANT** Alvarez's motion and accordingly **DISMISSES** this action  
3 **WITHOUT PREJUDICE.**

4           **IT IS SO ORDERED.**

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6 DATED: June 18, 2012

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8 Honorable Janis L. Sammartino  
9 United States District Judge  
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